

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS.324 OF 2011 AND 579 OF 2011.

WRIT PETITION NO. 324 OF 2011.

- 1 Shri John A. Fernandes,
resident of House No.E-236,
Corte de Oiteiro, Panaji-Goa.
- 2 Shri Maxi M. Gonsalves,
resident of House NO.276,
St. Tome, Mallar, Corlim,
Ilhas-Goa. Petitioners.

Versus

1. The Secretary(Transport),
Government of Goa, having
Office at Secretariat,
Porvorim, Bardez-Goa.
2. The Director of Transport,
Government of Goa, having
office at Directorate of
Transport, Juna House,
Panaji-Goa.
3. State of Goa, through the
Chief Secretary, having Office
at Secretariat, Porvorim,
Bardez-Goa.
4. Shri Upesh Wadkar Through
the office of Director of
Transport, Junta House,

Panaji-Goa.

5. Shri Arun V. Shetgaonkar,
Through the office of
Director of Transport, Junta
House, Panaji-Goa.
 6. Shri Shailesh Mayenkar,
Through the office of
Director of Transport, Junta
House, Panaji-Goa.
 7. Shri Balchandra P. Vaigankar,
Through the office of
Director of Transport, Junta
House, Panaji-Goa.
 8. Shri Chatur D. Parsekar,
Through the office of
Director of Transport, Junta
House, Panaji-Goa.
 9. Shri Satish P. Morje, Through
the office of Director of
Transport, Junta House,
Panaji-Goa.
 10. Shri Sarvesh S. Gaonkar,
Through the office of
Director of Transport, Junta
House, Panaji-Goa.
- Respondents.

Mr. D. Pangam, Advocate for the Petitioners.

Mr. P. Faldessai, Additional Government Advocate for Respondent
Nos.1 to 3.

WITH
WRIT PETITION NO.579 OF 2011.

1. Shri John Cardozo, Resident
of House No.366, Curca-
Cortalim, Ilhas-Goa.

..... Petitioner.

Versus

1. The Secretary(Transport),
Government of Goa, having
Office at Secretariat,
Porvorim, Bardez-Goa.
2. The Director of Transport,
Government of Goa, having
office at Directorate of
Transport, Junta House,
Panaji-Goa.
3. State of Goa, through the
Chief Secretary, having Office
at Secretariat, Porvorim,
Bardez-Goa.
4. Shri Chatur D. Parsekar, C/o
Directorate of Transport,
Government of Goa, Panaji-
Goa.

..... Respondents.

Mr. D. Pangam, Advocate for the Petitioner.

Mr. S. S. Rebello, Additional Government Advocate for Respondent
Nos.1 to 3.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.
Date : 6 June 2018.***

ORAL JUDGMENT (PER N. M. JAMDAR, J):

Both these petitions have been filed by the candidates who were taken on the waiting list for the post of Assistant Motor Vehicle Inspector, and not appointed when future vacancies arose. The Petitioners have sought writ of mandamus directing the Respondents-the State of Goa to issue appointment orders to the Petitioners to the post of the Assistant Motor Vehicle Inspector.

2. Writ Petition No.324 of 2011 is filed by two Petitioners. Writ Petition No.579 of 2011 is filed by one. In Writ Petition No.324/2011, Respondent Nos.4 to 10 have been joined, who are appointed on the post of Assistant Motor Vehicle Inspector and whose appointments, the Petitioners seek to challenge.

3. Reply affidavit is filed by the State in Writ Petition No.579/2011. Precipice is filed by the State adopting the reply filed in Writ Petition No.579/2011 in Writ Petition No.324/2011. Both these petitions were argued together and are disposed of by a common judgment.

4. The State of Goa, through the Directorate of Transport issued an advertisement on 1 April 2006 inviting applications for appointment to five posts of Assistant Motor Vehicle Inspectors. Out of five posts, one post was reserved for the members of the Other Backward Class. The Petitioners applied pursuant to the advertisement and the selection process was conducted. After the selection process was completed, the Respondent displayed final list of the selected candidates and the Petitioners were placed on the select list. The candidates higher on the select list were appointed to the posts of Assistant Motor Vehicle Inspector and the vacancies notified were filled in. The Petitioners were not so appointed. As further five vacancies arose, another advertisement was issued on 1 January 2007. One more advertisement was issued on 12 February 2007 for filling up the further vacancies for the post of the Assistant Motor Vehicle Inspector, Petitioners did not apply in furtherance of either of either of these advertisements. Respondent no. 4 to 10 were appointed.

5. The Petitioners made a representation to the Commissioner and the Secretary of Transport that the waiting list/select list upon which the Petitioners were placed was valid for one year and, therefore, the right of the Petitioners for an appointment on

the subsequent advertised vacancies has been violated. The Petitioners addressed one more representation on 28 December 2007 to the Commissioner. The Petitioners also made a representation to the Leader of Opposition on 18 July 2007. The Petitioners made a grievance to the Chief Secretary on 22 April 2008 that the representation made by the Petitioners to the Transport Department is not been replied to. On 16 September 2008, the Petitioners filed an application under Right to Information Act for status of the representations made and the action taken as per the report. The Petitioners sent a reminder regarding the application under the Right to Information Act on 24 December 2008. The Petitioners sent a legal notice through an advocate. Since the legal notice was not replied to, the Petitioners filed Writ Petition No. 692/2010, which was disposed of on 25 October 2010, to take a decision as per law. The representation was disposed of on 24 March 2011. The Petitioners have filed these petitions in May 2011.

6. We have heard Mr. D. Pangam, learned Counsel for the Petitioners and Mr. P. Faldessai, learned Additional Government Advocate for Respondent Nos.1 to 3.

7. The primary contention raised by the Petitioners is that

the waiting list was drawn pursuant to the selection process as per the advertisement dated 1 April 2006, and the period of waiting list was one year and apart from declared number of vacancies and the vacancies likely to arise during that year should also had to be filled up from the candidates on the waiting list. This contention is based on the Office Memorandum dated 13 June 2000 and a note appearing in the advertisement dated 1 April 2006. According to the State, the reference to the 'vacancies' likely to arise during the year in the Office Memorandum dated 13 June 2000, is to the vacancies in respect of the posts advertised and not to fresh vacancies which will arise in future for which fresh advertisement is issued. According to the State, once the posts advertised get filled in, the select list comes to an end. The Respondents/State have also opposed the petition on the ground of delay and laches by the Petitioners.

8. In support of their contentions that the Petitioners have a right to be considered for the appointment in respect of the vacancies which were notified on 5 January 2007 and 12 February 2007, Mr. Pangam, learned Counsel for the Petitioners has placed heavy reliance on Memorandum dated 13 June 2000, more particularly, paragraph 3 therein. Paragraph 3 of the Memorandum reads thus:-

“In view of the above, the Government has decided

that D.S.Cs. while drawing up the list of selected candidates, hereafter, should restrict the select list of candidates to the extent of declared number of vacancies in a particular year and the vacancies likely to occur during the year in which it meets. The select list so drawn will be valid for a period of one year. Consequently, all the lists of selected candidates which are one year old will be invalid.”

He has also placed reliance on the note of the advertisement dated 1 April 2006 which reads thus:-

“N.B.II

Please Note that more vacancies may arise in the next six months in which case candidates applying in response to this advertisement and successful will be considered for appointment.”

Placing reliance on the decision of the Apex Court in the case of *A. P. Aggarwal vs Govt of NCT of Delhi and another*¹, Mr. Pangam, contended that even though the Office Memorandum dated 13 June 2000 are executive instructions they are enforceable in law and in view of clear language of the Memorandum, the Petitioners' rights to be considered for the aforesaid vacancies arising during the period of one year is established and cannot be defeated. It was also contended by Mr. Pangam, that the State Government in its internal correspondence has also acknowledged the right of the Petitioners as can be seen from

¹ (2000)1 SCC 600

the note prepared by the office of the Directorate of Transport dated 15 April 2008 and of the Personnel Department of Chief Secretary dated 16.6.2008. Mr. Pangam, relied upon the decisions in the case of *State of J & K Vs Satpal*², *Nasseem Ahmad and others Vs State of Uttar Pradesh*³ and *Bharat Sanchar Nigam Limited and others Vs. Abhishek Shukla and another*⁴.

9. Mr. P. Faldessai, learned Additional Government Advocate in support of his contention that the waiting list would be exhausted when all advertised posts will be filled up and relied upon the decision in the case of *Mukul Saikia and others Vs. State of Assam and others*⁵, *State of Orissa and another Vs. Rajkishore Nanda and others*⁶, *Surinder Singh and others Vs State of Punjab and another*⁷, *Rakhi Ray and others Vs High Court of Delhi and others*⁸ and *Kulwinder Pal Singh and another Vs State of Punjab and others*⁹. It was contended that waiting list cannot be a recurring pool from which all further appointments are made and the vacancies referred to in the

2 (2013)11 SCC 737

3 (2011)2 SCC 734

4 (2009)5 SCC 368

5 (2009)1 SCC 386

6 (2010) 6 SCC 777

7 (1997) 8 SCC 488

8 (2010) 2 SCC 637

9 (2016) 6 SCC 532

Memorandum are the vacancies arising for a period of one year in respect of advertised post and not fresh advertisements during the period of validity of the waiting list.

10. It is an admitted position that advertisement pursuant to which the Petitioner applied was for five post, which were filled up. Thereafter two advertisements were issued for the new vacancies that arose. The question for our consideration is whether the interpretation placed by the State Government as regards the vacancies likely to arise during the year would mean the vacancies in respect of the posts advertised is correct. The following discussion would show that this interpretation by the State is in consonance with the law declared by the Apex Court.

11. First to consider the decision cited by Mr. Pangam. In the case of *Satpal*, the Apex Court was considering non-appointment of the Respondent therein in place of one of the selected candidates who was offered appointment but did not join. The representation of the Respondent to be appointed on the said post with reference to the said advertised post which remained to be filled in, was rejected. The Apex Court upheld the right of the Respondent in reference to the advertised post in which he participated and was placed on the waiting

list. This decision does not assist the Petitioners as it does not arise from the factual position which arises in this present petition. Admittedly, the Petitioners are not seeking appointment qua the advertised post to which they applied.

12. In the case of *A. P. Aggarwal*, the facts were that an advertisement was issued in respect of the member of a Tribunal. Selection Committee was constituted, panel was drawn and one Mr. Sahni was appointed as a member in December 1997 and immediately on 4 January 1998, he relinquished his post. The Petitioner claim for appointment to that post was negated. The Apex Court upheld the right of the Petitioner that, since the vacancy arose during the period when the waiting list was in operation to be considered with reference to the post advertised. Again, this decision does not arise from the factual position wherein the Petitioners are claiming appointment to the post in respect of subsequent advertisement.

13. Third case cited by Mr. Pangam is of *Naseem Ahmad*. In this case the appellants before the Apex Court was included on waiting list to the four posts in District Judiciary in the State of Uttar Pradesh. The State treated the appellants as ad-hoc appointees on the

basis that they were appointed after one year of publication of waiting list and subsequently terminated the appellants. The Apex Court considered the Rules 4 and 12 of the Uttar Pradesh Subordinate Civil Courts Inferior Establishment Rules, 1955 and noted that these Rules did not prescribe any limitation of one year and, therefore, the foundation of defence of the respondent/State of the time limit was itself faulty.

14. Thus in none of these decisions relied upon by Mr. Pangam, we find any indication that the interpretation placed by the Respondent-State at paragraph 3 of the Office Memorandum can be considered as impermissible. The Apex Court has recognized the right of the candidates in those cases to the vacancies in reference to the advertised posts to which they had applied. We have not been shown any decision upholding the right of such candidates who are placed on the waiting list for particular number of posts advertised, to be considered for appointment after all posts are filled up, in respect of the vacancies which are future vacancies that arise separately in future.

15. The law as regards the select list and the right of the persons who are placed on the waiting list has arisen for consideration of the Apex Court in various decisions. It is settled that a person

whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility and cannot create a vested right to be appointed. In the case of *Mukul Saikia* the Apex Court has observed that filling up of the vacancies over and above the number of vacancies advertised would be violative of Articles 14 and 16 of the Constitution of India. Mere inclusion in the select list does not confer any right to be appointed against the vacancies. In the case of *Rajkishore Nanda*, the Apex Court laid down that vacancies cannot be filled up over and above the number of vacancies advertised as it is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, it was held that it amounts to improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational, otherwise the exercise would be arbitrary. The Memorandum dated 13 June 2000 does not clearly specify and lay down any exceptional circumstances. On the contrary, the State Government has

asserted that it has chosen not to deviate from the basis rule and it is not making appointment over and above the posts that are advertised, from the waiting list. This stand is thus in consonance with Articles 14 and 16 of the Constitution of India and as per the decision of the Apex Court, and it is this interpretation that will have to be given effect to and the memorandum be read accordingly.

16. Therefore the petitioner's case based solely a particular interpretation on the Memorandum and the Advertisement cannot be accepted. The interpretation placed by the Respondents-State on the Office Memorandum dated 13 June 2000, is correct and is in consonance with Article 14 and 16 of the Constitution of India .No other statutory rule nor any judicial pronouncement is shown to us where right propounded by the Petitioner has been recognized, except for the Office Memorandum, which we have discussed.

17. Assuming the Petitioners have any right, there is one more ground on which the Petitioners are not entitled to any equitable relief under Article 226 of the Constitution of India. The Respondent nos.4 to 10 have been appointed pursuant to the advertisements issued and are now working since for last ten years. The Petitioners have sought for quashing and setting aside their appointments. One of the settled

positions in respect of the exercise of writ jurisdiction is that the Petitioner must approach the Court diligently and without laches. The Court is entitled to refuse exercise of equity jurisdiction if the Court finds that the Petitioners have not approached the Court diligently and is responsible for the resultant prejudice to the innocent parties.

18. In the present case, the posts were advertised on 1 April 2006. As per contention of the Petitioners waiting list was for a period of one year. Since the recruitment process was completed on 1 August 2006, the list would thus continue till 1 August 2007. When the vacancies were advertised on 5 January 2007 and 12 February 2007, the Petitioners who are claiming right on the ground that the select list was available till 1 August 2007, had more than 6 months time to make a grievance regarding the same or approach this Court. The Petitioners did not do so. The first representation of the Petitioner in Writ Petition No. 524 of 2011 is after the period of waiting list is expired in October 2007. Mr. Pangam, sought to justify the laches on the ground that the Petitioners were not aware that the vacancies were arisen in respect of the very same posts. We are unable to appreciate this submission. Vacancies did not arise in respect of the posts advertised but they were fresh vacancies. The

advertisements were issued in the similar format as earlier one. The advertisements specifically mentioned the posts for which applications were called for. By making a bald submission that the Petitioners were not aware, the Petitioners cannot overcome the gross laches. Such general ground can be taken by anybody and it is not possible to ascertain its veracity. In the representation given to the Respondents/Authority there is no such statement that the Petitioners were not aware about the vacancies. All the representations have started thereafter. No reasonable explanation is given by the Petitioners as to why the Petitioners could not approach this Court within a period of one year when the waiting list was in force when the Petitioners have more than 6 months time to approach. The Petitioners have chosen to make representation to leader of opposition but did not choose to approach this Court. The period of select list was allowed to be lapsed. The Petitioners cannot rely upon internal documentation within said department, as the Petitioners procured the same only pursuant to an application under Right to Information Act made in September 2008.

19. Almost two years of the advertisement, on 24 December 2008 that the representation through Advocate was made. Merely because this Court had directed disposal of the representation on 25

October 2010, the laches are not condoned. The conduct of the Petitioner in Writ Petition 579/2011 is even worse. This Petitioner went out of India for two years, returned on 16 January 2009 and filed petition on 3 May 2011. The entire recruitment process in both these Petitions were completed long time back and the Respondent nos. 4 to 10 came to be appointed. There is, therefore, justification in the contention raised by the Respondents/State that the Petitioners have approached this Court with laches. On delay in such matters, in the case of *Rajkishore Nanda*, the Apex Court observed that a select list cannot be treated as a reservoir for the purpose of appointments and no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the Court at a belated stage.

20. Resultantly interpretation of the Respondents/State on paragraph 3 of the Office Memorandum dated 13.6.2000 that the select list of candidate referred to therein will come to an end after all advertised posts are filled and that vacancies stipulated therein arising during the period of one year are only those which in reference to the advertised post is correct. All the five posts advertised on 1 April 2006, for which selection process, the Petitioners participated, have

been filled in. Once that was done, the waiting list came to an end. There were no vacancies that arose in respect of the posts advertised on 1 April 2006 during the period of one year. The vacancies that arose and advertised on 5 January 2007 and 12 February 2007 were new vacancies in which selection process the Petitioners never participated. The petition suffers from gross laches.

21. In view of the this position, no case made out for grant of any relief in favour of the Petitioners. Both the petitions are dismissed. Rule is discharged with no order as to costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.